

California Regional Water Quality Control Board  
Santa Ana Region  
Staff Report  
May 16, 2003

**ITEM: 16**

**SUBJECT:** Administrative Civil Liability Complaint No. R8-2003-0023,  
Woodbridge Development, Yorba Linda, Orange County

**BACKGROUND**

On January 24, 2003, the Executive Officer issued Administrative Civil Liability Complaint (ACL) No. R8-2003-0023 (copy attached) to Woodbridge Development (Woodbridge) for alleged violations of the State General Permit for Storm Water Runoff Associated with Construction Activity (General Permit). In the ACL, the Executive Officer proposed an assessment of \$80,000 for the alleged violations.

**INTRODUCTION**

The matter before the California Regional Water Quality Control Board, Santa Ana Region (Board), is whether to affirm, reject, or modify the proposed administrative civil liability assessment against Woodbridge.

ACL No. R8-2003-0023 was issued by the Executive Officer to Woodbridge for the lack of implementation of adequate erosion and sediment controls at the Casino Ridge development that resulted in the discharge of sediment-laden, storm water to the local municipal storm sewer system and two natural drainages.

**DISCUSSION**

The General Permit regulates the discharge of storm water from construction sites as required under Section 402(p) of the Federal Clean Water Act. Coverage under the permit is obtained by filing a Notice of Intent (NOI), site map, and fee (annual fee of \$700), with the State Water Resources Control Board. Woodbridge filed an NOI and obtained coverage under the General Permit on 3/8/02, WDID 8 30S317579. The project is located northeast of the cross streets San Antonio Road and Casino Ridge Road in the City of Yorba Linda.

According to the site's Notice of Intent submitted by Woodbridge, construction commenced on April 15, 2002 on 99 acres. Board staff (staff) initially inspected the site on May 30, 2002, during dry weather conditions. Implementation of Best Management Practices (BMPs) was adequate for the summer months, but staff discussed with the site superintendent, Mr. Bruce, the need to have site slopes vegetated or protected with erosion control BMPs prior to the rains.

On November 6, 2002, staff inspected the site at the request of Mr. Bruce. This request was due to the proposed addition of a temporary desilting basin near the entrance to the site and Mr. Bruce's concern that the site was not ready for rain. Staff noted the lack of erosion and adequate sediment control BMPs along the site perimeter, particularly on the two very large slopes on the southern perimeter of the site. Based on site conditions, staff orally pointed out the deficiencies in erosion and sediment control BMPs to Mr. Bruce during a meeting at the on-site construction trailer.

On November 8, 2002, staff inspected the site during the beginning of a light rain, and noted that the large slopes were still were not protected by desilting basins or adequate erosion control.

As a consequence of site conditions and the lack of erosion control BMPs on perimeter slopes, staff issued a Notice of Violation (NOV) to Woodbridge on December 3, 2002. In addition, a NOV was issued to the City of Yorba Linda regarding their apparent lack of oversight and/or enforcement at the subject site.

On December 12, 2002, staff met with representatives from Woodbridge, their subcontractors, and the City of Yorba Linda. At that time, V-ditches had been installed on the two large slopes and erosion control spray (hydromulch) was being applied to the first of the slopes. Staff again emphasized the need to implement an effective combination of erosion and sediment control BMPs at the site, particularly on the large, southern perimeter slopes and questioned the effectiveness of hydromulch application that far into the rainy season. The representatives from Woodbridge and their subcontractors assured staff that they had adequate supplies/equipment to protect the site and over twenty years expertise in handling sites during the wet season.

On December 15 and 16, 2002, a storm event dropped a total of two (2) inches of rain on the site. On December 17, 2002, staff responded to a complaint from a resident living along the western perimeter of the site regarding excessive site runoff and sediment in her back yard. Staff observed visible erosion of the back yard slope and sediment on her patio and lawn, as well as sediment deposited in the swimming pool and adjoining deck next door. Inspection of the construction site showed that the slopes above these homes did not have adequate erosion and sediment controls, and sediment-laden runoff had exited the site and entered neighboring properties.

On the southern perimeter of the site, runoff from an under-sized desilting basin had discharged into an existing drainage and downstream v-ditch. This v-ditch had filled with sediment from the site and flooded onto Twin Oaks Street. City street sweepers and a private work crew cleaned up the street and the v-ditch. Erosion rills were visible on slopes throughout the site including the ones above the complainant's house and the two very large slopes on the southern perimeter. In areas where it had been used, the erosion control product had failed, possibly due to having been applied too thin or without adequate drying time prior to the storm. Again, staff expressed concern to the site superintendent that the site was not being adequately protected through an effective combination of erosion and sediment controls, as was evident from the failure of perimeter slopes and the off-site discharge of sediment.

On December 19 and 20, 2002, a storm event dropped a total of one (1) inch of rain on the site. The majority of this rain fell within a six (6) hour period on December 19, 2002. Staff inspected the construction site on December 20, 2002. Staff observed that discharges from the two large slopes on the southern perimeter of the site had caused sedimentation of the two natural drainages that receive water from the slopes. The slopes eroded on the face and on the sides, with deeper erosion occurring around the sides.

Woodbridge violated Provisions B.1 and B.2 of the General Permit. Pursuant to Water Code Section 13385(c)(2), civil liability may be administratively imposed for the preceding violations by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each day of violation. Additional liability, not to exceed \$10 per gallon, may be imposed for each gallon discharged in excess of 1,000 gallons. The volume of the unauthorized, sediment-laden storm water discharge was estimated to be a minimum of 130,000 gallons, based on runoff from the southern, perimeter slopes. Therefore the maximum civil liability that can be imposed is \$1,320,000 (\$30,000 for three days of violation and an additional \$1,290,000 based on the discharge volume).

The Water Code specifies factors the Board shall consider in the establishing the amount of civil liability. These factors are discussed below.

1. Nature, Circumstances, Extent and Gravity of the Violations

The discharger was fully aware of the requirements of the General Permit to develop and implement a storm water pollution prevention plan to control the discharge of pollutants in storm water runoff. As a result of inadequate BMP implementation, excessive sediment was discharged to natural drainages, as well as the local storm sewer system.

2. Ability to Pay the Proposed Assessment

The discharger has not provided any information to indicate that it would have difficulty paying the proposed assessment.

3. Prior History of Violations

Prior to the inspection that led to the issuance of the NOV for the subject site, Woodbridge had no history of violations.

4. Degree of Culpability

Woodbridge submitted an NOI and agreed to comply with the terms and conditions of the General Permit. Woodbridge is therefore fully culpable for violating the General Permit, which implements the Clean Water Act. In addition, staff had warned Woodbridge on three occasions, prior to the three (3) days of violation, that the aforementioned slopes needed adequate erosion control to prevent off-site discharge of sediment.

5. Economic Benefit or Savings, if any, Resulting from the Violations

By failing to effectively develop and implement an effective SWPPP and implement effective erosion control BMPs, Woodbridge gained an economic advantage of approximately \$60,000. Economic savings from these violations are estimated as follows:

Cost to use jute mat as a temporary erosion control	\$35,000
Cost to construct adequate detention basins	\$25,000
Total cost savings	<hr/> = \$60,000

**STATEWIDE ENFORCEMENT POLICY**

On February 19, 2002, the State Water Resources Control Board adopted a Revised Water Quality Enforcement Policy to ensure that enforcement actions throughout the State are fair, firm and consistent. The above-described administrative civil liability complaint is in accordance with the State Enforcement Policy.

**RECOMMENDATION**

After consideration of the above factors, staff recommends that the Board affirm the assessment of \$80,000 specified in the Administrative Civil Liability Complaint issued by the Executive Officer on January 24, 2003.

STATE OF CALIFORNIA  
REGIONAL WATER QUALITY CONTROL BOARD  
SANTA ANA REGION

In the matter of:

Woodbridge Development  
27285 Las Ramblas, #230  
Mission Viejo, CA 92691

Attn: Mr. Danny Huitt

Complaint No. R8-2003-0023  
for  
Administrative Civil Liability

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Woodbridge Development (Woodbridge) is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), may impose liability under Section 13385(c)(2) of the California Water Code. A hearing concerning this Complaint will be held before the Board within ninety days of the date of issuance of this Complaint. The hearing in this matter will be scheduled for the Board's regular meeting on February 21, 2003 at the Loma Linda City Council Chambers.
2. Woodbridge or its representative will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of civil liability by the Board. An agenda for the meeting will be mailed to you not less than 10 days before the hearing date.
3. At the hearing, the Board will consider whether to affirm, reject or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. The storm water runoff from the Woodbridge construction site (site), located in the City of Yorba Linda, is regulated under the State's General Permit for Storm Water Runoff Associated with Construction Activities, Order No. 99-08-DWQ, NPDES No. CAS000002 (General Permit), WDID No. 8 30S317579.
5. Woodbridge is alleged to have violated Provisions B.1 ("Storm water discharges and authorized non-storm water discharges to any surface or ground water shall not adversely impact human health or the environment,") and B.2 ("The SWPPP developed for the construction activity covered by this General Permit shall be designed and implemented such that storm water discharges and authorized non-storm water discharges shall not cause or contribute to an exceedance of any applicable water quality standards . . .") of the General Permit. As more fully set forth below, Woodbridge allowed discharges of sediment-laden storm water that caused or threatened to cause pollution, contamination, or nuisance. Woodbridge failed to develop and implement a suitable Storm Water Pollution Prevention Plan (SWPPP), implement an effective combination of erosion and sediment controls (Section A.6 of

the General Permit) and implement appropriate Best Management Practices (BMPs) for the elimination or reduction of pollutants. Woodbridge discharged pollutants to waters of the United States from the construction site. Pursuant to Water Code Section 13385(a)(2), civil liability may be imposed for the preceding violations.

6. This complaint is based on the following facts:

- a) The site, Casino Ridge, is a 99-acre parcel located in the City of Yorba Linda and lies northeast of the cross streets San Antonio Road and Casino Ridge Road. According to the site's Notice of Intent, Woodbridge Development is the developer of the site and construction commenced on April 15, 2002 on 99 acres.
- b) Regional Board staff (staff) initially inspected the site on May 30, 2002 during dry weather conditions. A SWPPP was present at the site at this time and BMPs were being implemented for dry weather. Staff discussed with the site superintendent, Mr. Bill Bruce, the need to have the slopes vegetated or protected with erosion control BMPs prior to the rains;
- c) On November 6, 2002, staff inspected the site at the request of Mr. Bruce. This request was due to the proposed addition of a temporary desilting basin near the entrance to the site and Mr. Bruce's concern that the site was not ready for rain. Staff noted the lack of erosion and adequate sediment control BMPs along the site perimeter, particularly on the two very large slopes on the southern perimeter of the site. Based on site conditions, staff orally pointed out the deficiencies in erosion and sediment control BMPs to Mr. Bruce during a meeting at the on-site construction trailer;
- d) On November 8, 2002, staff inspected the site during the beginning of a light rain, and noted that large slopes still drained off the site without desilting basins or adequate erosion control. The lack of an effective combination of erosion and sediment controls was again brought to Mr. Bruce's attention. Based on site conditions observed during the November 6 and November 8, 2002 inspections, a Notice of Violation (NOV) was issued to Woodbridge on December 3, 2002;
- e) On December 12, 2002 staff inspected the site, at Woodbridge's request, in response to the NOV. At this time, V-ditches had been installed on the two large slopes and erosion control spray (hydromulch) was being applied to the first of the slopes. Staff again emphasized the need to implement an effective combination of erosion and sediment control BMPs at the site, particularly on the large, southern perimeter slopes.
- f) On December 15 and 16, 2002, a storm event dropped a total of two (2) inches of rain on the site. On December 17, 2002, staff responded to a complaint from a resident living along the western perimeter of the site regarding excessive site runoff and sediment in her back yard. Staff observed visible erosion of the back yard slope and sediment on her patio and lawn, as well as sediment deposited in the swimming pool and adjoining deck next door. Inspection of the construction site showed that the slopes above these homes did not have

adequate erosion and sediment controls, and sediment-laden runoff had exited the site and entered neighboring properties. On the southern perimeter of the site, runoff from an under-sized desilting basin had discharged into an existing drainage and downstream v-ditch. This v-ditch had filled with sediment from the site and flooded onto Twin Oaks Street. City street sweepers and a private work crew cleaned up the street and the v-ditch. Erosion rills were visible on slopes throughout the site including the ones above the complainant's house and the two very large slopes on the southern perimeter. Where it had been used, the erosion control product had failed in areas possibly due to having been applied too thin or without adequate drying time prior to the storm. Again, staff expressed concern that the site was not adequately being protected through an effective combination of erosion and sediment controls, as was evident from the failure of perimeter slopes and the off-site discharge of sediment; and,

- g) On December 19 and 20, 2002, a storm event dropped a total of one (1) inch of rain on the site. The majority of this rain fell within a six (6) hour period on December 19, 2002. Staff inspected the construction site on December 20, 2002. Staff observed that discharges from the two large slopes on the southern perimeter of the site had caused sedimentation of the two natural drainages that receive water from the slopes. The slopes eroded on the face and on the sides, with deeper erosion occurring around the sides.
- 7. Section 13385(a)(2) provides that any person who violates waste discharge requirements shall be civilly liable. Section 13385(c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each day the violation occurs. Additional liability, not to exceed \$10 per gallon, may be imposed for each gallon discharged in excess of 1,000 gallons. The volume of the unauthorized, sediment-laden storm water discharge was estimated to be a minimum of 130,000 gallons.
- 8. Pursuant to Section 13385(c), Woodbridge is civilly liable for the sum of \$30,000. (\$10,000 each for 3 days of violation) and an additional \$1,270,000 based on the discharge volume ( $130,000 - 3,000 = 127,000$  gallons @ \$10 per gallon). The total maximum assessment is \$1,280,000 for the violations cited in Paragraph 5 above.
- 9. Board staff spent a total of 30 hours investigating this incident (@\$70 per hour, the total cost for staff time is \$2,100). Woodbridge saved approximately \$60,000 by not developing, implementing, and maintaining proper erosion and sediment control BMPs. These factors were considered in assessing the penalty indicated in Paragraph 10, below.
- 10. Section 13385 (e) specifies factors that the Board shall consider in establishing the amount of civil liability. These factors include: nature, circumstances, extent, and gravity of the violation, and, with respect to the discharger, the ability to pay, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a

minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation. The factors are evaluated in the table below. After consideration of these factors, the Executive Officer proposes that civil liability be imposed on Woodbridge in the amount of \$80,000 for the violations cited above. An invoice for this amount is enclosed.


Factor	Comment
<b>A. Nature, Circumstances, Extent and Gravity of Violation</b>	Unauthorized storm water discharge of sediment-laden water. Inadequate implementation, maintenance and monitoring of BMPs during storm events.
<b>B. Culpability</b>	The discharger violated the terms of the General Permit by failing to implement appropriate BMPs and by discharging storm water containing pollutants.
<b>C. Economic Benefit or Savings</b>	Woodbridge saved approximately \$60,000 by not properly developing, implementing and maintaining proper BMPs.
<b>D. Prior History of Violations</b>	Numerous staff inspections with oral notification and one NOV stating failure to implement appropriate BMPs for an effective combination of erosion and sediment control.
<b>E. Staff Costs</b>	Regional Board staff spent approximately 30 hours investigating this incident (@\$70 per hour, the total cost for staff time is \$2,100).
<b>F. Ability to pay</b>	The discharger has not provided any information to indicate that it is unable to pay the proposed amount.

#### WAIVER OF HEARING

Woodbridge Development may waive its right to a hearing in this matter. If Woodbridge chooses to do so, please sign the attached waiver and return it, together with the bottom portion of the invoice and a check for \$80,000, to the State Water Resources Control Board in the preprinted enclosed envelope.

If you have any questions, please contact Mark Smythe at (909) 782-4998 or Michael Adackapara at (909) 782-3238, or contact the Board's legal counsel, Jorge Leon, at (916) 341-5180.

1-24-03  
Date

  
Gerard J. Thibeault  
Executive Officer



In the matter of: )  
 )  
Woodbridge Development )  
27285 Las Ramblas, #230 )  
Mission Viejo, CA 92691 )  
 )  
Attn: Mr. Danny Huitt )

Complaint No. R8-2003-0023  
for  
Administrative Civil Liability

### WAIVER OF HEARING

I agree to waive Woodbridge Development's right to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Complaint No. R8-2003-0023. I have enclosed a check, made payable to the State Water Resources Control Board, in the amount of \$80,000. I understand that I am giving up Woodbridge Development's right to be heard and to argue against allegations made by the Executive Officer in this complaint, and against the imposition of, and the amount of, the liability proposed.

\_\_\_\_\_  
Date

\_\_\_\_\_  
for Woodbridge Development